IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7711 OF 2004

Janata Sahakari Bank Limited.. Petitioner

Vs.

Shri Ashok Gangadhar hanamsheth. Respondent

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Shri D.J.Bhange for the petitioner.

Shri Vishwanath Talkute for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 21st OCTOBER, 2004.

P.C.

1. Heard the learned advoctes for the parties.

2. The petitioner challenges the judgment and order passed by the Industrial Court, Satara, in Appeal on 28th July, 2004 awarding 50% of the back wages to the respondent on the ground that there was no justification for the lower appellate Court to interfere in the discretionary order of the Labour Court refusing back wages to the respondent while ordering the reinstatement.

3. The reliance is sought to be placed in the decision of the Apex Court in **Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya & Anr.,** reported in 2002 II CLR 1062 and **Malkiat Singh v. State of Punjab & Ors.,** reported in 1996 I CLR 997.

4. Undisputedly, the respondent was dismissed from the service on 11th June, 1992. The Labour Court decided the matter on 31st July, 1999. The respondent was reinstated in the service on 13th August, 1999. The impugned judgment and order was passed on 28th July, 2004. Evidently the respondent was out of employment for more than 7 years during the pendency of the matter before the Labour Court, since the date of his dismissal.

5. It is true that the Labour Court considering the fact that there was no claim by the respondent that he was jobless during the period during which he was out of service of the petitioner-bank, had refused the back wages to the respondent. The Labour Court, however, having noticed that there has been no material on record to establish that the respondent was gainfully employed during the relevant period, taking into consideration the overall facts including the fact of pendency of the matter in the Court for a

period of 7 to 8 years, has ordered 50% of back wages for the relevant period.

6. It is pertinent to note that the Labour Court had proceeded to refuse the back wages after considering the issue specifically framed in relation to the entire back wages to the respondent. Apparently, the petitioner was put on guard by the Labour Court regarding necessity of the materials on record to justify refusal of back wages to the respondent in cases of reinstatement in the service. Undisputedly, no evidence has been produced by the petitioner in that regard. At the same time, it is also proved that the respondent also had not entered the witness box to claim that he was jobless or that he was not gainfully employed during the relevant period. Considering the fact that there is nothing on record even to suggest remotely that during the relevant period the respondent was gainfully employed, the discretion exercised by the Labour Court was not in a judicious manner particularly in view of the fact that the petitioner was put on guard regarding necessity of evidence on record in relation to the gainful employment of the respondent during the relevant period and yet no material in that regard was placed on record. Once it was established that the

punishment was totally disproportionate to the charges proved against the workman, it is necessary for the Court to ascertain whether the workman had been gainfully employed during the period in which he was not in the service, before deciding the issue pertaining to the grant of back wages. Considering the same and bearing in mind the pendency of the proceedings for 7 to 8 years, it cannot be said that there has been illegal interference by the Industrial Court in the discretion exercised by the Labour Court in the matter of refusal of grant of back wages. Once it is held that the workman is entitled for reinstatement in service, as a normal rule, back wages have to follow, unless situation requires an order to be contrary. Mere failure on the part of the workman to claim that he was jobless during the relevant period may not be sufficient justification to refuse any part of back wages.

7. The decision of the Apex Court in **Hindustan Motors' case (supra)**, was also in the facts wherein there were no pleadings or evidence whatsoever on the aspect whether the workman was employed elsewhere during the relevant period, and yet the Apex Court taking into consideration all the facts including the fact of long drawn litigation, ordered the payment of

50% of back wages. In the said case, the workman was dismissed on 15th February, 1980. The Labour Court by its order dated 12th July, 1982, refused to interfere in the order of dismissal. On reference of the dispute under the provisions of Industrial Disputes Act, 1947, the Industrial Tribunal by its award dated 3rd October, 1991 ordered reinstatement of the workman with back wages. The High Court of Calcutta disposed of the petition on 12th March, 1998 and set aside the order of Tribunal, which was carried in appeal before the Apex Court, and the same was disposed of on 26th June, 2001. Applying the said ruling in the decision of the Apex Court in **Hindustan Motors' case (supra)**, it cannot be disputed that the respondent herein was out of service for nearly more than 7 to 8 years, and therefore, awarding of 50% back wages cannot be said to be improper exercise of discretion by the lower appellate Court. The decision in **Malkiat Singh's case (supra)** is of no help as it was delivered in the peculiar facts of that case, which were totally different from the facts of the case in hand.

8. For the reasons stated above, I do not find any justification in the impugned judgment and order passed by the Industrial Court. Hence, the Petition is rejected with no order as to costs.